



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/620,804	07/02/2003	Edward B. Ferguson	1634.0080001/DKSC	9002
26111	7590	11/17/2004	EXAMINER	
STERNE, KESSLER, GOLDSTEIN & FOX PLLC 1100 NEW YORK AVENUE, N.W. WASHINGTON, DC 20005			ESTREMSKY, GARY WAYNE	
			ART UNIT	PAPER NUMBER
			3676	

DATE MAILED: 11/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/620,804

Applicant(s)

FERGUSON, EDWARD B.

Examiner

Gary Estremsky

Art Unit

3676

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 September 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5, 7, 8, 10 and 12-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-5, 7, 8, 10 and 12-15 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- 1) ☐ Certified copies of the priority documents have been received.
 - 2) ☐ Certified copies of the priority documents have been received in Application No. _____.
 - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Opening Remarks

1. Applicant's Remarks regarding previous Office Action are noted. It is important to note that multiple Patents covering the same invention could result in a situation where each of multiple assignees have the right to mutually exclude all others from the invention covered by the Patent.

In the present case, it is the examiner's position that Prosecution can best be expedited and double-patenting rejections avoided by Applicant's election of an invention for prosecution in this Application whereby the claims' scope and patentability will be clearly determinable from the record of Prosecution. Since various of the claims are drawn exclusively to one or the other embodiments, it must be assumed that Applicant relies on those differences for patentable distinction. Where there may be generic claims found to contain allowable subject matter, withdrawn claims dependent therefrom but drawn more specifically to a non-elected embodiment of the invention may be rejoined and allowed.

Election of Species Requirement

1. This application contains claims directed to the following patentably distinct species of the claimed invention:

Group I - as illustrated in Fig's 1 and 5 for example, where a magnet is mounted inside of a door.

Group II - as illustrated in Fig's 4 and 6 for example, where a magnet is mounted onto a door's surface.

Group III - as illustrated in Fig 7 for example, where a magnet is provided with mounting structure distinct from a door that allows the magnet's opposite poles to be reversed with respect to adjacent (not shown) other magnet's poles by its removal and replacement in the mounting structure.

Group IV - as illustrated in Fig. 8 for example, where a magnet's poles can be relocated by sliding the magnet and where inherently, only one pole of that magnet is active (functional) with respect to an other (not shown) magnet's pole.

Group VI - as illustrated in Fig 10 for example, where a magnet is provided with mounting structure distinct from a door that allows the magnet's poles to be switched by rotation.

Group VII - as illustrated in Fig 15-18 where a permanent magnet (per written description) is rotatably mounted and provided with a knob for its rotation.

Group VIII - as illustrated in Fig 15-18 where an electromagnet (per written description) is rotatably mounted and provided with a knob for its rotation.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, it appears that some claims may be generic to more than one species. It is important for Applicant to clearly indicate if any of the elected claims are generic to non-elected species whereby, should a generic claim be

Art Unit: 3676

indicated as allowable, dependent claims drawn more specifically to non-elected embodiment(s) of the invention can be rejoined and considered for allowance in this Application as provided by 37 CFR 1.141 whereby no unfair burden is placed on Applicant by this election of species requirement.

The different embodiments of the invention include features that are mutually exclusive and since various claims are similarly drawn to specifically include features exclusive to distinct embodiments, less a showing to the contrary, they are presumed to be separately patentable. So absent evidence to the contrary, it is the examiner's position that each one embodiment is not obvious from the other whereby examination of these several patentably-distinct inventions would place undue burden on the examiner since the search for one embodiment is not necessarily required for each of the other embodiments.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP §.809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over

Art Unit: 3676

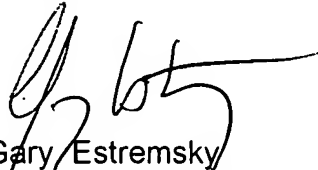
the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gary Estremsky whose telephone number is 703 308-0494. The examiner can normally be reached on M-Thur 7:30-6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tom Will can be reached on 703 308-3870. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Gary Estremsky
Primary Examiner
Art Unit 3676